STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
ANGELA MARIE SMITH,	)	
	)	
	)	
Complainant,	)	CHARGE NO(S): 2006CF1500
	)	EEOC NO(S): 21BA60620
and	)	ALS NO(S): 07-738
	)	
BOARD OF EDUCATION OF THE CITY OF CHICAGO,	)	
	)	
	)	
Respondent.	)	

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION)

Entered this 1st day of April 2011

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

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BOARD OF EDUCATION OF THE CITY OF CHICAGO,	)	
	)	
	)	Judge William J. Borah
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

On September 25, 2007, the Illinois Department of Human Rights ("Department") filed a complaint on behalf of Complainant, Angela Marie Smith, with the Illinois Human Rights Commission ("Commission"). Complainant alleged that Respondent, Board of Education of the City of Chicago, discriminated against Complainant on the bases of her sex and retaliation.

This matter comes to be heard on Respondent's Motion for Summary Decision. Complainant filed a written response to the motion, and Respondent filed a written reply to that response. Complainant filed a Motion to Strike that was later designated as a sur-reply by the Commission's September 16, 2008, order. This matter is ready for decision.

The Department is an additional statutory agency that has issued state actions in this matter. The Department is named herein as an additional party of record.

FINDINGS OF FACT

The following facts were derived from uncontested sections of the pleadings or from uncontested sections of the affidavits and other documentation submitted by the parties. The findings did not require, and were not the result of, credibility determinations. All evidence was viewed in the light most favorable to Complainant.

1. Complainant, Angela Marie Smith, was an employee of Respondent, Board of Education of the City of Chicago, from December 1991 through March 2006.

2. In March 2004, Complainant became an assistant principal of Henry H. Nash Elementary School ("Nash"). Complainant's initial supervisor and school principal was "Mr. Moore."

3. On November 18, 2004, Mr. Moore wrote to Complainant advising her that he did not wish to have her continue as assistant principal. On April 25, 2005, Complainant filed a charge with the Department and on June 22, 2005, her case was settled.

4. On November 1, 2005, Complainant was assistant principal at Nash. Dr. Joan Wilson-Epps ("Epps"), female, was interim principal.

5. On November 1, 2005, Complainant attended a conference at Young Elementary School ("Young").

6. Crystal Bell ("Bell"), female, Young's school principal was asked by an unidentified "staff member" to observe Complainant.

7. Bell observed Complainant walking into various rooms on the first floor of Young. Complainant then walked into the main office, sat down on a bench and closed her eyes for five to ten minutes. Complainant then got up and went into the school's auditorium with the other conference attendees.

8. Bell also observed Complainant exit from the school's auditorium and told Bell she "lost her purse." Bell and Complainant walked back to the lobby and entered the same rooms she had previously entered looking for her purse.

9. Complainant said she needed to call a cab. Later, one arrived at the school and Complainant left the premises.

10. Bell determined Complainant was "disoriented," and telephoned Jacqueline

Anderson ("Anderson"), female, Young's Deputy of School Management and Instruction. After consulting with Anderson, Bell telephoned Epps at Nash and described to her Complainant's behavior as "disoriented."

11. Neither Bell nor Complainant knew each other prior to the November 1, 2005, conference.

12. Bell was unaware of Complainant's settled and closed April 2005 prior charge of discrimination with the Department.

13. Dr. Shirley Dukes ("Dukes") is female, and was an attendee and Management Support Director for the area where Nash and Young schools are located. Dukes, too, contacted Epps by telephone and stated that a third party told her that he "suspected Ms. Smith (Complainant) was under the influence of alcohol or drugs."

14. Dukes was unaware of Complainant's settled and closed April 2005 prior charge of discrimination with the Department.

15. In conformity with Respondent's *Reasonable Suspicion Testing Guidelines*, Epps and Bonnie Smith ("Bonnie Smith"), female, and a second Assistant Principal at Nash, planned to meet Complainant for the purpose of observing whether she exhibited the types of behavior as expressed by Bell and Dukes.

16. Complainant arrived at Nash by cab around 1:00 p.m.

17. Epps arranged to meet Complainant outside of the school's auditorium and initiated a conversation with her about the morning's conference as a ploy to observe her behavior.

18. Both Epps and Bonnie Smith stood approximately two feet away from Complainant, and during the conversation they smelled alcohol while she spoke. Complainant's lipstick was "smeared," her "slip two inches below her skirt" and her speech was "slurred."

19. After Epps requested Complainant to follow her to her office, as witnessed by Bonnie Smith, Complainant was informed that she would undergo a drug and alcohol test. Epps directed Complainant to remain in her office.

20. Contrary to Epps's directive, Complainant "stood," "repeatedly said, 'you'll never get Nash!'" and "left the office." Complainant then left the school building.

21. A letter from Respondent's Chief Executive Officer ordering Complainant to take a "Reasonable Suspension Test" arrived at 3:10 p.m. or 3:40 p.m. by fax.

22. On November 2, 2005, Respondent notified Complainant to report to work at the Area Three Management Office beginning November 3, 2005.

23. Complainant received her regular pay and benefits during the period from November 3 through 22, 2005.

24. Notice of a "pre-suspension hearing" for November 17, 2005, was mailed and the Postal Service returned the unclaimed letter to Respondent on November 26, 2005.

25. On November 16, 2005, Respondent's attorney faxed to Complainant's attorney a copy of the draft dismissal charges and factual bases of them, all stemming from the events of November 1, 2005.

26. On November 17, 2005, a pre-suspension hearing was held. Complainant was represented by an attorney.

27. On November 21, 2005, the pre-suspension hearing officer, Sharon Bailey, female, issued an opinion in which she recommended Complainant's suspension without pay pending her discharge hearing. In part, Ms. Bailey decided, "Ms. Smith was informed of the allegation against her and was provided an opportunity to rebut that allegation. Ms. Smith did not submit to the drug testing which is required by the Board Rule 4-7."

28. After proper notice, Complainant's discharge hearing was held on February 3, 2006. Complainant was represented by an attorney, witnesses testified, cross-examination was conducted and evidence was admitted.

29. On March 14, 2006, the discharge hearing officer, Tom Krieger, male, issued an opinion in which he recommended Complainant's discharge.

30. On March 24, 2006, Respondent served Complainant with a letter notifying her of her dismissal.

CONCLUSIONS OF LAW

1. Complainant is an "employee" as that term is defined under the Act.

2. Respondent is an "employer' as that term is defined under the Act and was subject to the provisions of the Act.

3. The Commission has jurisdiction to consider the charge of discrimination, even though Complainant's discharge was decided at a hearing before a hearing officer at the Department of Labor Relations and upheld by the Circuit Court of Cook County and the Illinois Court of Appeals.

4. Respondent has articulated a legitimate, nondiscriminatory reason for its decision to terminate Complainant as an assistant principal of Nash Elementary School.

5. Complainant has failed to present any evidence that the reasons given by Respondent for its action against Complainant were pretexts for sex discrimination or retaliation.

6. There is no genuine issue of material fact and Respondent is entitled to a recommended order in its favor as a matter of law.

7. A summary decision in Respondent's favor is appropriate in this case.

DISCUSSION

Summary Decision Standard

Under Section 8-106.1 of the Illinois Human Rights Act ("Act"), either party to a complaint may move for summary decision. A summary decision is analogous to a summary judgment in the Circuit Courts. Cano v. Village of Dolton, 250 Ill.App.3d 130, 138, 620 N.E.2d 1200, 1206 (1st Dist.1993).

A motion for summary decision should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. Fitzpatrick v. Human Rights Comm'n, 267 Ill.App.3d 386, 391, 642 N.E.2d 486, 490 (4th

Dist.1994). All pleadings, affidavits, interrogatories, and admissions must be strictly construed against the movant and liberally construed in favor of the non-moving party. Kolakowski v. Voris, 76 Ill.App.3d 453, 456-57, 395 N.E.2d 6, 9 (1st Dist.1979). Although not required to prove her case as if at a hearing, the non-moving party must provide *some* factual basis for denying the motion. Birck v. City of Quincy, 241 Ill.App.3d 119, 121, 608 N.E.2d 920, 922 (4th Dist.1993). Only facts supported by evidence, and not mere conclusions of law, should be considered. Chevrie v. Gruesen, 208 Ill.App.3d 881, 883-84, 567 N.E.2d 629, 630-31 (2d Dist. 1991). If a respondent supplies sworn facts that, if uncontroverted, warrant judgment in its favor as a matter of law, a complainant may not rest on his pleadings to create a genuine issue of material fact. Fitzpatrick, 267 Ill.App.3d at 392, 642 N.E.2d at 490. Where the party's affidavits stand uncontroverted, the facts contained therein must be accepted as true and, therefore, a party's failure to file counter-affidavits in response is frequently fatal to his case. Rotzoll v. Overhead Door Corp., 289 Ill.App.3d 410, 418, 681 N.E.2d 156, 161 (4th Dist.1997). Inasmuch as summary decision is a drastic means for resolving litigation, the movant's right to a summary decision must be clear and free from doubt. Purtill v. Hess, 111 Ill.2d 229, 240 (1986).

"Complainant as a *Pro Se* Litigant"

Pro Se Complainant, Angela Smith, shepherded her case throughout a number of state forums, authoring pleadings and submitting written responses. There is some sympathy with the *pro se* litigant, as the practice of law requires skills that sometimes test the abilities of licensed attorneys. However, "Justice requires that the parties live with litigation decisions they have made, either through their attorney or on a *pro se* basis." Fitzgerald and Fischer Imaging Corp., IHRC, ALS No. 10142, May 29, 1998.

The fact that Angela Smith is a *pro se* litigant has no influence on this decision, as "...a *pro se* litigant is held to the standard of an attorney." Mininni and Inter-Track Partners, IHRC, ALS No. 7961, December 10, 1996 quoting, First Illinois Bank and Trust v. Galuska, 155 Ill. App. 3d 86, 627 N.E. 2d 325 (1st Dist. 1993).

The Illinois Appellate Court both advises and warns the *pro se* litigant, "Our task is not to divine the truth from the interstices of the parties' filings or to sift through the record like a tealeaf reader conjuring up fortunes in order to gain a proper understanding of the case before us." Id.

Complainant's response is made up of a hybrid of misplaced terms, intertwined with concepts plucked from Illinois School Code, Respondent's policies, Constitutional law, and Title VII. Complainant filed her Complaint under the Act, specifically alleging sex discrimination and retaliation, and thus this analysis.

Complainant attached numerous documents as exhibits; however, unless Complainant's written response or sur-reply referenced the relevant portion of an exhibit, the document was ignored.

"Collateral Estoppel"

A disciplinary hearing was held on February 3, 2006, at the Department of Labor Relations, addressing a number of charges stemming from the allegation that Complainant reported to work under the influence of alcohol or illegal drugs and that she refused to submit to proper and sanctioned investigatory testing. Complainant was represented by an attorney, witnesses appeared, evidence was admitted and cross examination was conducted. On March 14, 2006, the hearing officer, after deliberating, recommended Complainant's discharge. Respondent's Chief Executive Officer and Respondent itself approved the hearing officer's recommendation and, on March 24, 2006, Complainant was served with written notice of her discharge. Complainant appealed her case to the Circuit Court of Cook County, and later, to the Illinois Court of Appeals, without success.

Respondent raised the argument of collateral estoppel in its supportive brief and concluded that "...Complainant is collaterally estopped from re-litigating those facts in this forum Commission)." However, Respondent does not explain how Complainant is estopped from going forward with her discrimination claim.

The doctrine of *collateral estoppel* operates to bar re-litigating issues or factual determinations that were previously determined by a court of competent jurisdiction. Three elements must be present to invoked the doctrine: 1) A final judgment on the merits was entered in a prior action; 2) the issue decided in the prior adjudication is identical with the one presented in the suit in question; and 3) the party against whom *collateral estoppel* is asserted was a party or in privity with a party in the prior action. Talmitch Jackson and City of Chicago, Department of Fire, IHRC, ALS No. 10588, December 1, 2003, quoting St. Paul Fire & Marine Ins. Co. v. Downs, 247 Ill.App.3d 382, 617 N.E. 2d 338 (1st Dist. 1993).

Respondent has failed to demonstrate that the issues decided before Complainant's February 3, 3006, hearing are identical to the causes of action before the Commission. In, Village of Bellwood Bd. of Fire and Police Commissioners v. Illinois Human Rights Commission, 184 Ill.App.3d 339, 540 N.E.2d 370 (1st Dist. 1989), the Appellate Court held, "...the Commission has exclusive jurisdiction to determine claims pursuant to the Act and ...(it) will not give *res judicata* effect to the decision of courts and sister agencies, where the granting of preclusive effect would undermine that primary purpose of the Act."

Complainant's disciplinary hearing is comparable to the Civil Service Commission in Jones v. Civil Service Commission of Alton, et al, 80 Ill.App.3d 74, 399 N.E.2d 256 (5th Dist. 1980), where "...the only issues that were properly before the court were whether the evidence supported a finding that the person charged with the offense did in fact commit the offense, and whether the commission of the offense constituted 'sufficient cause' for the discharge." However, like in Jones, the issue before the Commission is whether Complainant's termination "constituted disparate treatment so as to support a claim of discrimination. There are essentially different issues, requiring different evidence and facts."

Also, in Morton and City of Chicago, Department of Buildings, IHRC, ALS No.9347, August 4, 1998, the Commission also held that the decision of the Personnel Board did not collaterally estop the Complainant from bringing an action for race discrimination.

"If the Human Rights Commission were to give res judicata (and collateral estoppel) effect to Civil Service findings, it would abdicate its role in enforcing the Act." Vance and Illinois Department of Corrections, IHRC, ALS No. 3806, October 5, 1992.

Respondent cited Trejo and University of Illinois, IHRC, ALS No. S-10306, May 4, 2004, but it failed to explain its relevance to this case. In the Trejo case, "...the federal district court was not asked to consider whether national origin discrimination played a role in Respondent's decision..." Id. Complainant does not forfeit any potential Human Rights Act claim based on findings of misconduct made by a federal court. Id

Sex discrimination or retaliation causes of action were not adjudicated in any of the prior disciplinary hearings, as those forums do not have jurisdiction to do so. Accordingly, Respondent's *collateral estoppel* argument fails.

STANDARD FOR PROVING GENDER DISCRIMINATION UNDER THE ACT

Complainant alleges that Respondent discharged her from its employment due to her gender. There are two methods for proving employment discrimination, direct and indirect. Sola v. Human Rights Comm'n, 316 Ill. App. 3d 528, 536, 736 N.E.2d 1150, 1157 (1st Dist. 2000). Because there is no direct evidence of employment discrimination in this case (*e.g.*, a statement by Respondent that Complainant was being disciplined because of her sex), the indirect analysis is appropriate here.

The analysis for proving a charge of employment discrimination through indirect means was described in the U.S. Supreme Court case of McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and is well established. First, Complainant must make a *prima facie* showing of discrimination by Respondent. Texas Dep't. of Cmty. Affairs v. Burdine, 450 U.S. 248, 254-55 (1981).[1] If she does, then Respondent must articulate a legitimate, nondiscriminatory reason for

[1] Complainant must show that (1) she is a member of a protected group; (2) that she performed her job satisfactorily; (3) that the employer took adverse action against her despite the adequacy of her work; and (4) that a similarly situated employee, who is not a member of the

its actions. Id. If Respondent does so, then Complainant must prove by a preponderance of evidence that Respondent's articulated reason is merely a pretext for unlawful discrimination. Id. This analysis has been adopted by the Commission and approved by the Illinois Supreme Court. See Zaderaka v. Human Rights Comm'n, 131 Ill.2d 172, 178-79 (1989).

Where, however, the legitimate, non-discriminatory reason for the employment action has been made clear, it is no longer necessary to determine whether a *prima facie* case has been made. Since the only purpose of a *prima facie* case is to determine whether the Respondent has to articulate a legitimate reason for it action, it becomes perfunctory to analyze the matter in terms of a *prima facie* case if the legitimate, non-discriminatory reason for the action has already been articulated. *Bush and The Wackenhut Corporation*, 33 Ill. HRC Rep. 161,165, (1987) quoting, U.S. Postal Service v. Aikens, 460 U.S. 711, 103 S. Ct. 1478 (1983). Federal cases which decide analogous questions under Federal law are helpful but not binding on the Commission in making decisions under the Human Rights Act. City of Cairo v. FEPC, 21 Ill.App.3d 358, 315 N.E.2d 344 (5th Dist.1974).

By definition, proof of a *prima facie* case raises an inference that there was discrimination. By articulating a reason for the employment action in issue, the Respondent destroys the inference. At that point, the question becomes whether the reason which was articulated by the Respondent was true, or merely a pretext for discrimination. Id.

"Investigation of Complainant"

Although Complainant can go forward with her discrimination claims, she will not have an opportunity to "re-hash" the "factual battles played out and lost by the Complainant...in the absence of any proof that the prior ... court proceeding lacked minimum stands of due process." Id. Complainant must submit some evidence that the internal investigation conducted by a supervisor(s) demonstrated an animosity against Complainant's sex or in retaliation for her April

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protected group was not subjected to the same adverse action. Budzileni v. Department of Human Rights, 392 Ill.App.3d 422, 910 N.E.2d 1190 (1st Dist. 2009).

2005 charge filed with the Department. Id., citing Rivera and Group W Cable, IHRC, ALS No. 2559, October 25, 1993. If the investigation was based on "good faith," that is, if the supervisor believed her report, it will stand. "For purposes of her discrimination claim, an investigation that provides management with a reasonable opportunity of uncovering the truth is the only matter, regardless of the outcome of the investigation." Ford and Caterpillar, Inc , IHRC, ALS No. 7625 (S), October 28, 1996. Even if the investigation produced the wrong recommendation, but was "honestly believed," Complainant would still need to show that her sex or the filing of her prior claim with the Department was responsible for a biased investigation. Stewart v. Henderson, 207 F.3d 374 (7th Cir. 2000)

Complainant was an employee with the Chicago Public Schools from December 1991 through March 2006. In March 2004, Complainant became assistant principal of Henry H. Nash Elementary School, and her initial supervisor and principal was "Mr. Moore." On November 18, 2004, Mr. Moore wrote to Complainant advising her that he did not wish to have her continue as assistant principal. On April 25, 2005, Complainant filed a charge with the Department and on June 22, 2005 her case was settled. By the November 1, 2005, incident, the subject of her complaint with the Commission, Complainant still held the position of assistant principal with Nash Elementary School. Dr. Joan Wilson-Epps, female, became interim principal.[2]

On November 1, 2005, Complainant attended a conference at Young Elementary School. Crystal Bell, female, Young's school principal, was asked by an unidentified "staff member" to observe Complainant's public behavior. As per Bell's affidavit, she introduced herself to Complainant who seemed "disoriented." "Ms. Smith walked into various rooms on the first floor and I (Bell) followed her (Complainant). Ms. Smith walked into the main office, sat down on a bench and closed her eyes for five to ten minutes. Smith then got up and went into the school auditorium with the other conference attendees."

[2] The parties did not state the status of "Mr. Moore."

Later, Bell represented that Complainant exited from the auditorium and told Bell she "lost her purse." Bell and Complainant walked back to the lobby and entered the same rooms she had previously entered looking for her purse. Bell represented in her affidavit that Complainant did not locate her purse while in her presence. Complainant said she needed to call a cab. Soon after, one arrived at the school and Complainant left the premises.

At the time of Bell's observation and conclusion about Complainant, neither she nor Complainant alleged they knew each other prior to their introduction at the conference. Bell was unaware of Complainant's April 2005 charge.

Bell determined Complainant was "disoriented," and telephoned Jacqueline Anderson, female, Young's Deputy of School Management and Instruction. After consulting with Anderson, Bell, telephoned Epps at Nash. During the conversation Bell again described Complainant's behavior as "disoriented."

Complainant does not allege that Bell or Anderson, both women, had an animus against Complainant, because of Complainant's gender. Furthermore, Complainant does not allege that either Bell or Anderson knew about her prior settled charge of April 2005.

Respondent also included an affidavit of Dr. Shirley Dukes, female, and an attendee of the same conference Complainant attended on November 1, 2005, as well as Management Support Director for the area where Nash and Young schools are located. Dukes represented that a third party communicated Complainant's behavior to her. With this information, Dukes stated that she contacted Epps by telephone and repeated that this third party "suspected Ms. Smith was under the influence of alcohol or drugs."

Dukes stated that she was unaware that Complainant had filed a charge of discrimination against the Board, and denied any gender animus against Complainant.

Complainant's written response did not address Bell's observations of Complainant at the conference or the content of Dukes's and Bell's telephone calls to Epps, all supported by affidavits.

Therefore, it must be concluded that Bell's communicated conclusion to Epps that Complainant was "disoriented" and Dukes's separate conversation with Epps that Complainant was thought to be "under the influence of alcohol or drugs," were honestly believed.

An employer may offer testimony concerning a conversation in order to establish what information was relied upon in reaching a termination decision. Regan v. Acme Steel Company, IHRC, ALS 5609, July 24, 1998, cited Estate of Parks v. O'Young, 289 Ill.App.3d 976, 682 N.E.2d 466 (1st Dist.1997). "...an employer is not a court and it is free to conduct its business based upon hearsay sources of information." Id. The Illinois Appellate Court held that the question is not whether the heads of the other departments told the truth, but whether they did, in fact, express dissatisfaction. "... It is irrelevant to the discrimination claim whether the department superintendents were lying or telling the truth. If the superintendents did express dissatisfaction... this would tend to show that the discharge decision was not based on age. .. the question is...whether these conversations took place." Id.

Thus far, Respondent methodically explained the cause that initiated the telephone calls to Epps, the content of them and the identification of the callers. The state of mind of Epps, after Bell and Dukes communicated with her, was premised that Complainant was honestly believed to be "disoriented" and "suspected of being under the influence of alcohol or drugs." However, that was not enough. Epps took independent action.

"The Drug and Alcohol Test"

In conformity with Respondent's *Reasonable Suspicion Testing Guidelines* and common sense, Epps and Bonnie Smith, female, and Assistant Principal of Nash, met with Complainant to investigate whether Complainant exhibited the types of behavior expressed by Bell and Dukes. Complainant arrived at the school by cab around 1:00 p.m. Epps arranged to meet Complainant outside of the school's auditorium and to initiate a conversation with her about the morning's conference as a ploy to observe her behavior. Both Epps and Bonnie Smith stood approximately two feet away from Complainant, and both smelled the odor of alcohol stemming

from her breath while she spoke. Epps and Smith represented that Complainant's lipstick was "smeared," her "slip two inches below her skirt" and her speech was "slurred."

Complainant was asked by Epps to accompany them to her office. As witnessed by Bonnie Smith, Complainant, once in the office, was informed by Epps that Complainant must undergo a drug and alcohol test and was directed to remain in her office. Epps represented in the transcript of the February 3, 2006, disciplinary hearing and attached as Respondent's exhibit, "...I said to Miss A. Smith that I was going to complete a form that I had in front of me that because I had reasonable suspicion that she was under the influence of alcohol and I was going to fax it in and follow Board's procedure; and that's what I did, I completed it and faxed it down to the central office. " Epps faxed the document at 1:27 p.m.

"Did you ask Angela Smith to stay in your office?"

Epps replied, "Yes, I did."

Where did she go to your knowledge?

"She left my office."

Did you see her again that day?

"No. I left the office to find Miss A. Smith."

Was she supposed to be on duty at that time?

"Yes"

Did you find her?

"No, I did not."

Did you continue to look for her?

"I looked for her. I asked security to look for her. I could not find her."

Bonnie Smith represented in her transcript, after Epps communicated her desire for Complainant to take a drug and alcohol test, Complainant "reached for some mints...on a table in a jar...and tipped it over." "She (Epps) asked her (Complainant) not to leave the office."

Contrary to Epps's directive, Complainant "stood and left the office" and left the building "after 2:00 p.m."

Respondent's Executive Officer's letter directing Complainant to submit to the test was received at the school at approximately 3:10 p.m. or 3:40 p.m., as represented by Epps. Complainant attempted to create an issue by arguing that the fax stamp of 18:21 p.m. (6:21 p.m.) accurately reflected the time the school received the CEO's letter, but Complainant argument is purely speculative as she left the Epps's office and the school contrary to Epps's order. In any respect, the fax cover was in obvious error as it was stamped "January 1, 1970."

Complainant's written response does not explain or deny that she left the office and school after being directed by Epps to remain in her office. Complainant does not deny that she left before her regular scheduled departure time, 4:00 p.m. Instead, she declared only that there is no set time to depart for an assistant principal.

Complainant chose to leave the premises even though she had been directed to stay in Epps's office until the test was administered or she received further instructions from the Chief Executive Officer or the principal. The importance of the principal's directive, as well as its immediacy, was known by Complainant as an employee for 16 years and an assistant principal. Complainant's choice prevented conclusive evidence of her sobriety. Complainant now wants to benefit from her flight by claiming Respondent did not have evidence to prove she was under the influence. But the articulated non-discriminatory reason for Complainant's dismissal has a second side of the blade, that of her refusal to cooperate with Respondent's testing procedures.

A number of administrative due process procedural events took place which included:

On November 2, 2005, Respondent notified Complainant to report to work at the Area Three Management Office beginning November 3, 2005.

Complainant received her regular pay and benefits during the period from November 3 through 22, 2005.

Notice of a pre-suspension hearing for November 17, 2005, was mailed and

the postal service returned the unclaimed letter to Respondent on November 26, 2005.

On November 16, 2005, Respondent's attorney faxed to Complainant's attorney a copy of the draft dismissal charges and factual bases of them.

On November 17, 2005, a pre-suspension hearing was held. Complainant was represented by an attorney.

On November 21, 2005, the pre-suspension hearing officer, Sharon Bailey, female, issued an opinion in which she recommended Complainant's suspension without pay pending discharge hearing. "Ms. Smith was informed of the allegation against her and was provided an opportunity to rebut that allegation. Ms. Smith did not submit to the drug testing which is required by the Board Rule 4-7."

After proper notice, Complainant's discharge hearing was held on February 3, 2006. Complainant was represented by an attorney.

On March 14, 2006, the discharge hearing officer, Tom Krieger, male, issued an opinion in which he recommended Complainant's discharge.

Other procedural events took place until March 24, 2006, when Respondent served Complainant with a letter notifying her of her dismissal.

The real issue in this case is whether Complainant has satisfied her burden of presenting some evidence that Respondent's reasons for her termination are a mere pretext for sex discrimination or retaliation. To that end, Complainant may establish pretext for unlawful discrimination either directly, by offering evidence that a discriminatory reason more likely motivated the employer's action, or indirectly, by showing that the employer's explanations were not worthy of belief. Burnham City Hospital v. Illinois Human Rights Commission, 126 Ill.App.3d 999, 467 N.E.2d 635 (4th Dist.1884).

A complainant may discredit an employer's justification for its action by demonstrating either that: 1) the proffered reason had no basis in fact; 2) the proffered reason did not actually motivate the decision; or 3) the proffered reason was insufficient to motivate the decision. Smith

and Illinois Department of Mental Health & Developmental Disabilities and Central Management Services, IHRC, ALS No. S-5168, November 25, 1996.

The issue is "whether the employer's stated reason was honestly believed, and not whether it was accurate, wise or well considered." Stewart, supra. "Even if Complainant can show that Respondent's articulation was a lie, this does not mean that Complaint has prevailed..." Complainant has to show discriminatory motive. In Barz and Electro Motive Division of General Motors Corp., IHRC, ALS No. 10177, December 1, 1999, Complainant Barz failed to prove that Respondent's proffered reason for reducing her hours, while untrue, was a pretext for discrimination.

The Complainant offered no evidence as to why the Respondent should not be believed, or why discrimination was the more likely reason for Respondent's actions.

All parties involved the events leading up to Epps's request of Complainant to take a drug and alcohol test were female. Bell and Dukes independently determined that Complainant's behavior warranted contacting her supervisor, Epps. They did not know Complainant or her prior April 2005 charge with the Department. Epps and Bonnie Smith, both female, also independently observed Complainant and they reached the same conclusion as Bell and Dukes. A test was necessary to remove any doubt about Complainant's sobriety. It was Complainant's own conduct that preserved the doubt and added another sanctionable act of "refusing to submit to reasonable suspicion testing." The recommendation for discharge then went up the chain including a "pre-suspension hearing" before a female hearing officer, and a final disciplinary hearing. The termination recommendation was approved by every person and board who reviewed it. Complaint has not presented any evidence that the two hearing officers, one female, recommended her discharge because of sex discrimination or retaliation. Even if Epps had a discriminatory motive for the test, once Complainant decided to leave the premises instead of cooperating with the testing procedures, her employment fate and claim were compromised.

In the face of Respondent's articulation of a legitimate, non-discriminatory reason for Complainant's discharge, the Complainant must submit some evidence that the reason advanced is pretextual in order to prevail on her complaint. In this case, Complainant can only suggest that the timeline extending from June 2005 (date of the settlement of her first charge of discrimination) to November 1, 2005, (the date of the requested test) is suspicious. Complainant also nit-picks the board's administrative procedures and oddly points to Respondent's lack of evidence of her impairment, evidence she fled from creating when asked.

The comparatives offered by the Complainant were not helpful to her case as they reveal that male administrators were also comparably disciplined for violating Respondent's policy. Complainant's argument that no female comparables were submitted by Respondent missed the point of her sex discrimination claim.

There is no evidence in this record that anyone in the chain of investigation and decision was motivated in any way to seek or cause the discharge of Complainant because of her sex. No pretext can be found in this record.

Retaliation Standard and Discussion

Complainant's unlawful retaliation claim requires a different analysis. To establish a *prima facie* case of retaliation, Complainant would have to prove three elements: 1) that she engaged in a protected activity, 2) that Respondent took an adverse action against her, and 3) that there was a causal nexus between the protected activity and Respondent's adverse action. Carter Coal Co. v. Human Rights Commission, 261 Ill.App.3d 1, 633 N.E. 2d 202 (5th Dist. 1994).

Where, however, a legitimate, non-discriminatory reason for the employment action has been made clear, it is no longer necessary to determine whether a *prima facie* case has been made. Bush, supra.

Complainant has to show that Respondent's proffered reason is "unworthy of belief." Stancil and Moo and Oink, Inc., IHRC, ALS No. 3898, November 22, 1993. (See the discussion of "pretext" above.)

Complainant's argument misses the point of "protected activity" element of a claim of retaliation. Although Complainant's complaint alleged that her suspension and discharge were based on the filing of her April 2005 discrimination charge, her written response, page 27 and 28, stated a different reason, one of professional resentment on the part of Complainant of Epps selection as the school's interim principal. As Complainant concisely, but subjectively and accusatorily wrote, "Epps became increasing (sic) aware that staff and local school council members wanted Complainant to become the new interim principal." Also, both Epps's and Bonnie Smith's transcripts, attached by Respondent as exhibits, that on November 1, 2005, when Complainant was first told to participate in the drug and alcohol testing, "(Complainant) just kept repeating, ' you'll never get Nash school.'"

There is no evidence in this record that leads to a conclusion that anyone in the chain of investigation and decision was motivated in any way to seek or cause the discharge of complainant because of retaliation for filing a charge with the Department. No pretext can be found in this record.

Therefore, Complainant has failed to provide evidence of a genuine issue of material fact for any claim of discrimination. As a result, there is nothing to call into question Respondent's articulated reason for Complainant's dismissal. Thus, a recommended order in Respondent's favor is appropriate in this case.

RECOMMENDATION

Based upon the foregoing, there are no genuine issues of material fact and Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
WILLIAM J. BORAH
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: August 6, 2010